

other respects is required from time to time to assume supervisory duties for reasons such as the absence of the regular supervisor. Suppose, for instance, that it is the employer's practice to pay a higher wage rate to such a "relief" supervisor with the understanding that during the intervals in which the employee performs supervisory duties the employee is in training for a supervisory position. In such a situation, payment of the higher rate to the employee might well be based solely on the additional responsibility required to perform the job and the equal pay provisions would not require the same rates to be paid to an employee of the opposite sex in the group who does not have an equal responsibility. There would clearly be no question concerning such a wage rate differential if the employer pays the higher rate to both men and women who are called upon from time to time to assume such supervisory responsibilities.

(2) Other differences in responsibilities of employees in generally similar jobs may require similar conclusions. Sales clerks, for example, who are engaged primarily in selling identical or similar merchandise may be given different responsibilities. Suppose that one employee of such a group (who may be either a man or a woman) is authorized and required to determine whether to accept payment for purchases by personal checks of customers. The person having this authority to accept personal checks may have a considerable, additional degree of responsibility which may materially affect the business operations of the employer. In this situation, payment of a higher wage rate to this employee would be permissible.

(3) On the other hand, there are situations where one employee of the group may be given some minor responsibility which the others do not have (e.g., turning out the lights in his or her department at the end of the business day) but which is not of sufficient consequence or importance to justify a finding of unequal responsibility. As another example of a minor difference in responsibility, suppose that office employees of both sexes work in jobs essentially alike but at certain intervals a male and female employee per-

forming otherwise equal work within the meaning of the statute are responsible for the office payroll. One of these employees may be assigned the job of checking time cards and compiling the payroll list. The other, of the opposite sex, may be required to make out paychecks, or divide up cash and put the proper amounts into pay envelopes after drawing a payroll check. In such circumstances, although some of the employees' duties are occasionally dissimilar, the difference in responsibility involved would not appear to be of a kind that is recognized in wage administration as a significant factor in determining wage rates. Under such circumstances, this difference would seem insufficient to justify a wage rate differential between the man's and woman's job if the equal pay provisions otherwise apply.

**§ 1620.18 Jobs performed under similar working conditions.**

(a) *In general.* In order for the equal pay standard to apply, the jobs are required to be performed under similar working conditions. It should be noted that the EPA adopts the flexible standard of similarity as a basis for testing this requirement. In determining whether the requirement is met, a practical judgment is required in light of whether the differences in working conditions are the kind customarily taken into consideration in setting wage levels. The mere fact that jobs are in different departments of an establishment will not necessarily mean that the jobs are performed under dissimilar working conditions. This may or may not be the case. The term "similar working conditions" encompasses two subfactors: "surroundings" and "hazards." "Surroundings" measure the elements, such as toxic chemicals or fumes, regularly encountered by a worker, their intensity and their frequency. "Hazards" take into account the physical hazards regularly encountered, their frequency and the severity of injury they can cause. The phrase "working conditions" does not encompass shift differentials.

(b) *Determining similarity of working conditions.* Generally, employees performing jobs requiring equal skill, effort, and responsibility are likely to be

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performing them under similar working conditions. However, in situations where some employees performing work meeting these standards have working conditions substantially different from those required for the performance of other jobs, the equal pay principle would not apply. On the other hand, slight or inconsequential differences in working conditions which are not usually taken into consideration by employers or in collective bargaining in setting wage rates would not justify a differential in pay.

### **§ 1620.19 Equality of wages—application of the principle.**

Equal wages must be paid in the same medium of exchange. In addition, an employer would be prohibited from paying higher hourly rates to all employees of one sex and then attempting to equalize the differential by periodically paying employees of the opposite sex a bonus. Comparison can be made for equal pay purposes between employees employed in equal jobs in the same establishment although they work in different departments.

### **§ 1620.20 Pay differentials claimed to be based on extra duties.**

Additional duties may not be a defense to the payment of higher wages to one sex where the higher pay is not related to the extra duties. The Commission will scrutinize such a defense to determine whether it is bona fide. For example, an employer cannot successfully assert an extra duties defense where:

(a) Employees of the higher paid sex receive the higher pay without doing the extra work;

(b) Members of the lower paid sex also perform extra duties requiring equal skill, effort, and responsibility;

(c) The proffered extra duties do not in fact exist;

(d) The extra task consumes a minimal amount of time and is of peripheral importance; or

(e) Third persons (i.e., individuals who are not in the two groups of employees being compared) who do the extra task as their primary job are paid less than the members of the higher paid sex for whom there is an attempt to justify the pay differential.

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### **§ 1620.21 Head of household.**

Since a “head of household” or “head of family” status bears no relationship to the requirements of the job or to the individual’s performance on the job, such a claimed defense to an alleged EPA violation will be closely scrutinized as stated in § 1620.11(c).

### **§ 1620.22 Employment cost not a “factor other than sex.”**

A wage differential based on claimed differences between the average cost of employing workers of one sex as a group and the average cost of employing workers of the opposite sex as a group is discriminatory and does not qualify as a differential based on any “factor other than sex,” and will result in a violation of the equal pay provisions, if the equal pay standard otherwise applies.

### **§ 1620.23 Collective bargaining agreements not a defense.**

The establishment by collective bargaining or inclusion in a collective bargaining agreement of unequal rates of pay does not constitute a defense available to either an employer or to a labor organization. Any and all provisions in a collective bargaining agreement which provide unequal rates of pay in conflict with the requirements of the EPA are null and void and of no effect.

### **§ 1620.24 Time unit for determining violations.**

In applying the various tests of equality to the requirements for the performance of particular jobs, it is necessary to scrutinize each job as a whole and to look at the characteristics of the jobs being compared over a full work cycle. For the purpose of such a comparison, the appropriate work cycle to be determined would be that performed by members of the lower paid sex and a comparison then made with job duties performed by members of the higher paid sex during a similar work cycle. The appropriate work cycle will be determined by an examination of the facts of each situation. For example, where men and women custodial workers in a school system perform equal work during the academic year, but the men perform additional duties in the summer